

No. 3044.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

YEE CHEE SHIM,

Appellant,

VS.

EDWARD WHITE, as United States
Commissioner of Immigration at the
Port of San Francisco, California,

Appellee.

APPELLANT'S OPENING BRIEF.

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In the District Court the petition of Chew Yee on application for writ of habeas corpus on behalf of Yee Chee Shim, the appellant, was filed on the 21st day of December, 1916. The petition alleges that a warrant for the deportation of the appellant was issued by the Secretary of Labor of the United States, after the appellant had been wrongfully imprisoned and restrained of his liberty by the appellee, who is the Commissioner of Immigration, in the City and County of San Francisco and in the district in which the petition was filed.

It is contended in the petition that the imprisonment and restraint upon the liberty of the appellant was unlawful for the reason that the Secretary of

Labor had no jurisdiction over him or authority to issue the warrant and had no jurisdiction and authority to issue the warrant and exceeded his jurisdiction and authority in issuing the warrant of deportation.

It is further contended that the appellant was not given a fair and impartial trial and hearing for the reason that all of the evidence on behalf of the Government was produced by affidavits; and that appellant had no opportunity to exercise the right of confrontation or to cross-examine the witnesses.

It is further alleged that the appellant was lawfully within the United States and belonged to one of the classes of Chinese persons exempt under the Chinese Exclusion Act, or in other words that the appellant was a Chinese merchant, residing within the United States and who for a long time prior to his arrest resided in the United States as a bona fide merchant and actually engaged in the pursuit of his business as such merchant at the time of his arrest.

The record of the United States Department of Labor containing the testimony and showing the nature of the evidence and the circumstances under which it was obtained, although not incorporated in the transcript on this appeal, is before this Court, being Respondent's Exhibits A and B in the custody of the clerk.

A demurrer on behalf of the appellee Edward White, Commissioner of Immigration, was interposed and eventually on the 12th day of April, 1917, the District Court sustained the demurrer and ruled that

the petition be denied. From the opinion and order sustaining the demurrer and denying the petition for the writ of habeas corpus, this appeal has been taken.

There is no dispute as to the following facts:

The appellant is not accused by the Commissioner of Immigration or the Department of Labor with having violated the provisions of any statute or law of the United States except the Chinese Exclusion Act of 1888. There is nowhere any contention that he is within the United States in violation of the Act of February 20, 1907, and the amendments thereto, known as the General Immigration Act. If he is liable to deportation at all the appellee admits that it is for a violation of the Chinese Exclusion Laws.

In the warrant issued by the Secretary of Labor for the arrest of the appellant (see the exhibit on file) he is ordered taken into custody for the following reason:

“That he re-entered the United States in violation of Sec. 7 Chinese Exclusion Act of September 13, 1888, being a Chinese laborer who failed to produce to the proper officer the return certificate required by said section; and that he has been found within the United States in violation of Sec. 2 Chinese Exclusion Act of November 3, 1893, having secured admission by fraud, not having been at time of entry a lawfully domiciled exempt returning to resume a lawfully acquired domicile and to follow an exempt pursuit in this country.”

The application for the warrant of arrest forwarded to the Secretary of Labor by the inspector in charge recommends the issuance of the warrant for the following reasons:

"The person above named is an alien, native citizen of China. He first came to the United States on SS Mongolia, arriving at the port of San Francisco April 23, 1909, and was landed as the minor son of a merchant. Following pre-investigation as a merchant, member of Wah Yuen Co., of Oxnard, California, he departed from San Francisco for China on SS Siberia November 11, 1913. Returning to the same port on SS Mongolia October 27, 1915, he was re-admitted as a merchant. He is now unlawfully within the United States and subject to deportation under the provision of section 21 of the Immigration Act for the following, among other reasons, to-wit: That he re-entered the United States in violation of section 7 Chinese Exclusion Act of September 13, 1888, being a Chinese laborer who failed to produce to the proper officer the return certificate required by said section; further, he has been found within the United States in violation of section 2 Chinese Exclusion Act of November 3, 1893, having secured admission by fraud, not having been at the time of entry a lawfully domiciled exempt returning to resume a lawfully acquired domicile and to follow an exempt pursuit in this country. To substantiate these allegations, there are attached hereto and made a part hereof San Francisco landing record in the case of Yee Chee Shim, No. 14776/13-3 (Exhibit A); statements of Mrs. Virginia M. Rice, Severino Andreoli, John A. Thompson and G. R. Bellah to Inspector Bernard 6/24/16 (Exhibit B); letters addressed to the inspector in charge at Los Angeles by Immigration Inspector A. G. Bernard June 20, 1915, and the enclosures therein mentioned, consisting of partnership list of Wah Yuen Co., statement of Fred C. Duckham, and statement of Joseph R. Langley, all of which are marked 'Exhibit C'.

"The San Francisco landing record in the case

takes the place of verification of landing Form 505.

"Authority requested for expenses of officer and alien in conveyance from Phoenix, Arizona, to Tucson for hearing, and it is requested that bail bond be fixed at \$2,000.00."

There is no allegation or evidence that the appellant entered the country surreptitiously or that he entered it save through a regular port of entry or that he entered in violation of any law, except the Chinese Exclusion Laws. The sole reason for the order of deportation appears to be that he misrepresented that he was a merchant, whereas the records of the Department of Labor show him not to be of this exempt class. There is only one question of law involved, and that is that the Secretary of Labor had no jurisdiction to arrest and deport the appellant on the sole ground that he was found in this country in violation of the Chinese Exclusion Laws. Deportation can only be ordered by a United States Commissioner or a U. S. District Court.

In view of the fact that on January 28, 1918, the Supreme Court of the United States ruled upon the precise point involved in this case and held that in actions of this character the Department of Labor has no jurisdiction, we deem it only necessary to advert briefly to this decision of the Supreme Court and one or two District Court decisions preceding said decision, in order to conclusively demonstrate the error in the ruling of the District Court.

United States et al. v. Woo Jan, No. 586—
October Term, 1917, U. S. Supreme Court,
decided January 28, 1918.

It is not denied that prior to the conclusive settlement of the question by the recent ruling of the Supreme Court, there was some conflict of authority. In fact the weight of authority seemed to favor the proposition that the Secretary of Labor had jurisdiction. In the face of this authority, however, and in spite of it, one or two of the Federal Judges were bold enough to vigorously dissent; one of them, Judge Cochrane, writing a very careful, elaborate and well reasoned opinion in the case of *Ex Parte Woo Jan*, 228 Fed. 927. It was this case that the Circuit Court of Appeals for the 6th Circuit certified up to the Supreme Court because of the uncertainty and doubt that clouded the issue and that the Supreme Court decided in favor of the contention of Judge Cochrane in the District Court.

It is only necessary to state that in every respect the instant case is an exact parallel of the *Woo Jan* case. In both cases a petition for writ of *habeas corpus* was filed. In both a demurrer to the petition was sustained. In both, the sole question at issue was the jurisdiction of the Secretary of Labor over the deportation of Chinese persons where the sole ground for deportation was an alleged violation of the Chinese exclusion laws. In *United States v. Woo Jan*, the Circuit Court of Appeals certified to the Supreme Court the two following questions:

“(a) Has the Secretary of Labor acting within three years from the last entry, jurisdiction to arrest and deport a Chinese alien upon the sole ground that he is found in this country in violation of the Chinese exclusion act?

“(b) Are the facts stated in Woo Jan’s petition and admitted by demurrer inconsistent with any jurisdiction in the Department of Labor to cause his arrest and deportation?”

The Supreme Court’s answer to “(a)” was no, and to “(b)” yes. It follows that the same answer must be given in the case at bar.

Before closing this brief, we wish to dwell for a moment only, upon the right of the appellant to a fair and impartial trial before the Commissioner of Immigration. In view of the decision of the Supreme Court in *U. S. v. Woo Jan*, the question as a matter of fact becomes academic, but we wish to call attention to the case of *Backus v. Owe Sam Loon*, 235 Fed. 847, as authority for the proposition that the character of the evidence adduced on the hearing of the case of Yee Chee Shim was not such as to warrant the order of deportation of the Department of Labor, even assuming that it had jurisdiction.

Respectfully submitted,

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